UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

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GARRICK GEORGE SMITH,

Case No. 2:03-CV-196

          Petitioner,

v.   Hon. Richard Alan Enslen

PATRICIA CARUSO,

ORDER

          Respondent.
_____/

Petitioner Garrick George Smith has both appealed the Final Order of this Court denying him habeas relief and sought an extension of time to file a Rule 59 motion and to proceed *in forma pauperis* on appeal. Oral argument is unnecessary as to these motions.

Petitioner's affidavit and trust fund account statement show him to be without funds to pay appeal fees (he has only $11.27 in his trust account). The request to proceed *in forma pauperis* is in accordance with federal precedent allowing habeas petitioners to proceed *in forma pauperis* on appeal under the terms of 28 U.S.C. § 1915(a)(1). *See Kincade v. Sparkman*, 117 F.3d 949, 951-52 (6th Cir. 1997); *United States v. Simmonds*, 111 F.3d 737, 741-43 (10th Cir. 1997). As such, it will be granted.

Petitioner has also requested an unspecified extension of time to file a motion under Federal Rule of Civil Procedure 59(e). He has not explained the basis for any forthcoming Rule 59(e) motion. Additionally, since the motion was filed upon the filing of the notice of appeal, Petitioner has deprived this Court of jurisdiction to act under Rule 59(e). *See* Fed. R. App. P. 4(a)(4)(B)(I); *First Nat'l Bank of Salem, Ohio v. Hirsch*, 535 F.2d 343, 345-46 (6th Cir. 1976); *Sykes v. United*

States, 392 F.2d 735, 738 (8th Cir. 1968). The most that may be done is a certification under *Hirsch*

requesting remand. At present there is no basis for such certification nor for an extension to file a

procedurally improper motion.

THEREFORE, IT IS HEREBY ORDERED that Petitioner Garrick George Smith's

Motion to Proceed *in forma pauperis* (Dkt. No. 42) is **GRANTED**.

IT IS FURTHER ORDERED that Petitioner's Motion for Extension (Dkt. No. 41) is

DENIED.

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 /s/ Richard Alan Enslen

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DATED in Kalamazoo, MI: RICHARD ALAN ENSLEN
    February 10, 2006   SENIOR UNITED STATES DISTRICT JUDGE